S.B.Civil Misc. Appeal No.653/2001

Smt. Shanta Devi and others

vs.

Smt. Mena Devi and others.

Date : 25.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Himanshu Maheshwari, for the appellants.

Mr. Usman Gani, for the respondents.

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Heard learned counsel for the parties.

It appears that the appellate court found that the trial court committed serious illegality in passing the order dated 30.3.1993 on application filed by the plaintiff under Section 13(5) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The appellate court gave cogent reason for setting aside the said order and I do not find that the first appellate court exceeded its jurisdiction or committed any error of fact or law in setting aside the order dated 30.3.1993.

It will be worthwhile to mention here that the suit of the plaintiffs was decreed only on the ground of default committed by the defendants/tenants and one of the important and relevant fact in the suit for eviction on the ground of default is continuous payment of rent by the tenant during the pendency of the appeal failing which the

defence of the defendants can be struck off.

The trial court, though struck off the defence of the defendants, still considered the evidence of both the parties even on the issue of default also. Therefore, their appears to be contradiction in the order dated 30.3.1993 and the judgment and decree of the same day i.e. 30.3.1993.

In view of the above, the order of remand by the first appellate court is just and proper.

Accordingly, this misc. appeal, having no merit, is hereby dismissed.

However, the trial court is directed to decide the suit expeditiously. The record be sent to the trial court forthwith.

(PRAKASH TATIA), J.

S.Phophaliya